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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,310	04/02/2001	William R. Brown JR.	OB-193	9388

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The Gillette Company
Prudential Tower Building
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EXAMINER

COLE, LAURA C

ART UNIT PAPER NUMBER

1744

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/824,310

Applicant(s)

BROWN ET AL.

Examiner

Laura C. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-14 is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 15-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Carlucci et al., USPN D456,607.

Carlucci et al. disclose the claimed invention including a support member that is circular in shape (see Figures, circular disk member from which bristles extend) and a plurality of tufts of bristles supported at their base by the support member (see Figures), a pair of the tufts being tilted in substantially the same direction relative to the support member (any pair of tufts appear to be tilted in substantially the same direction relative to the support member, they appear to be tilted at 90 degrees or about perpendicular to the support member; see Figure 3), a first tuft of the pair having a different cross-section than a second tuft of the pair (see Figure 2; there is two different oval cross sections and a circular cross section). If the first tuft is the outer peripheral oval shaped tuft then it has a different length than a second tuft being an inner circular tuft (see Figure 1). There is a third tuft (central circular tuft) tilted relative to the support member (also tilted approximately 90 degrees from the support member) that has a different length than the

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first and second tufts (see Figure 1). The first tuft (outer peripheral oval shaped tuft) appears to have a different number of bristles than a second tuft (inner circular tuft, Figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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2. Claims 1, 3-4, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlucci et al., US D456,607 in view of Duey, USPN 1,901,230.

Carlucci et al. disclose the claimed invention including a support member that is circular in shape (see Figures, circular disk from which tufts extend) and a plurality of tufts of bristles supported at the base by the support member (see Figures), wherein at least one of the two tufts (two arbitrary outer tufts that are adjacent an outer periphery of the support member) has a cross-section which is other than round in shape (see Figure 2 tuft cross-sections). At least one of two tufts has a cross-section that is oval in shape (see Figure 2 tuft cross-sections). The plurality of tufts includes a third tuft that has a different cross-section than either of the two tufts (there are circular tufts and not as elongated oval tufts; see Figure 2). Carlucci et al. does not include two tufts being tilted away from each other at an acute angle relative to the support member, or more broadly, that a third tuft is tilted at an angle which is different from the angle of tilt of the first and second tufts.

Duey discloses a toothbrush head having a plurality of tufts of bristles (9) supported at their base by a circular support member (7; see Figure 2), wherein two tufts of bristles having their bases adjacent to each other (two tufts from the tufts adjacent the outer periphery) are tilted away from each other at an acute angle relative to the support member (see Figures) so that the tufts can reach into crevices between adjacent teeth when brushing (Page 2 Lines 6-25).

It would have been obvious for one of ordinary skill in the art to modify two adjacent tufts of bristles that are adjacent the outer periphery (two of the elongated oval

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shaped tufts) of the support of Carlucci et al. to be tilted away from each other at an acute angle relative to the support member, as Duey teaches, so that the toothbrush is better able to provide tufts that clean within crevices between teeth.

3. Claims 1, 3-5, and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moskovich, USPN 5,628,082 in view of Sekine, USPN 2,155,245.

Moskovich discloses the claimed invention including a head having a support member (unlabeled, see Figures), a plurality of tufts of bristles (88, 80, 82, 86) supported at their base by the support member (see Figure 16), two of the tufts having their bases adjacent to each other (two adjacent tufts indicated, one being tuft "88" and the other being tuft "92" as shown in Figure 16), the two tufts being tilted away from each other at an acute angle relative to the support member (see Figure 16, gumline tuft "88" extends outwardly at an acute angle relative to the support), wherein at least one of the two tufts has a cross-section that is other than round in shape (88 is oval). One of the two tufts has a cross-section which is oval in shape (88). There is a third tuft having a different cross section than the other two tufts (86). The third tuft is also tilted at an acute angle relative to the support member (see Figure 16; Column 6 Lines 7-9). Also, the plurality of tufts of bristles includes a pair of tufts being tilted substantially in the same direction relative to the support member (90 and 92; Figure 16), a first tuft (90) of the pair having a different cross-section than the second tuft (92) of the pair (see Figure 16). The first tuft has a different length than the second tuft (Column 6 Lines 27-31). There is a third tuft tilted relative to the support member having a different length than the first and second tufts (either 86 or 88; see Figure 16). The first tuft (90) has a

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different number of bristles than the second tuft (92; see Figure 16). The third tuft (either 86 or 88) is tilted at an angle different from the angle of tile of the first and second tufts (first and second tufts are angled at 90 degrees, or perpendicular and the third tuft is clearly tilted acutely, as shown in Figure 16). Moskovich does not disclose a support member that is circular.

Sekine clearly teaches that toothbrush head support members may comprise of many shapes, circular (Figure 2), square (Figures 4-5), or hexagonal (Figure 6).

It would have been obvious for one of ordinary skill in the art to modify the toothbrush head support member of Moskovich by having the support member be circular, as Sekine teaches, as a circular support member is desirable for toothbrushes that clean teeth.

Allowable Subject Matter

4. Claims 10-14 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter:

None of the prior art made of record comprises a plurality of tufts of bristles wherein a first one of the tufts is tilted along an imaginary radius which projects from a center of the circular surface and passes through a base of the first tuft and a *second one of the tufts being tilted along an imaginary circumference which encircles the center of the circular surface and passes through a base of the second tuft.*

Applicants Arguments

6. In the response filed 08 July 2005, the Applicant contends that:

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A. The instant application and USPN 6,308,367 to Beals were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

B. There is no teaching or suggestion in any of Duey or Bojar that would motivate one of ordinary skill in the art to substitute one of the non-round tufts of Bojar for one of the round tufts of Duey.

Response to Arguments

7. Applicant's arguments, filed 08 July 2005, with respect to the rejection(s) of claim(s) 1, 3-5, 15, 18, and 20 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Carlucci et al., Carlucci et al. in view of Duey, and Moskovich in view of Sekine.

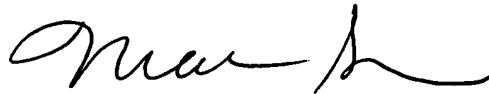
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



LCC
20 September 2005

MARK SPISICH
PRIMARY EXAMINER
GROUP 3400

1706